

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of :	
Modernizing the E-Rate Program for Schools and Libraries	WC Docket No. 13-184

**REPLY COMMENTS BY JIVE COMMUNICATIONS, INC.
RELATED TO THE E-RATE 2.0 NOTICE OF PROPOSED
RULEMAKING**

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Introduction

Jive Communications, Inc. submits these reply comments in response to the Notice of Proposed Rulemaking (NPRM) issued by the Commission in the above-captioned proceedings.

More than 700 commenters responded in the original round of comments, which closed on September 16, 2013. In these reply comments, Jive responds to several points raised by other commenters and expands on its original comments.

I. An exclusive focus on bandwidth and broadband adoption is contrary to the purpose of E-rate, and the Commission should reaffirm its commitment to providing technologically- and competitively-neutral funding.

Several commenters have advocated for the Commission to implement a policy under which “the Eligible Services List [would] be streamlined to focus exclusively on the Internet bandwidth, high speed data circuits and the equipment and connectivity inside buildings that are essential to deliver high speed bandwidth.”¹ Throughout the NPRM the Commission asks several questions regarding prioritization of fiber build-outs² and eliminating voice or other services from the Eligible Services List.³

While Jive supports widespread access to high-capacity broadband, the Commission should not prioritize fiber connectivity—or any other technology—for exclusive or preferred treatment under the program.

The principle of technological neutrality is rooted in the statutory framework underpinning the entire E-rate program. Congress directed that universal service support rules “should be competitively neutral . . . [and should] neither unfairly favor nor disfavor on technology over another.”⁴

Abandoning the principle of technological neutrality would therefore put the Commission at odds with a foundational statutory requirement of the E-rate program. It would also mark a serious and unwarranted departure from the Commission’s historical practice. Since the inception of the program, the Commission has recognized that “[t]echnological neutrality will allow the marketplace to direct the advancement of technology and all citizens [will] benefit from such development.”⁵ Furthermore, the Commission explained that “a policy of technological neutrality will foster the development of competition and benefit certain providers . . . that may have been excluded from participation in universal

¹ *Seca’s Recommendations for E-rate Reform 2.0*, The State E-rate Coordinator’s Alliance, June 18, 2013, at 5.

² NPRM ¶ 77.

³ NPRM ¶ 66.

⁴ 47 U.S.C. § 254(b)(7)

⁵ *Report and Order in CC Docket 96-45*, adopted May 7, 1997, released May 8, 1997, FCC 97-157 (the “97 Order”), ¶ 49, available at http://fjalfoss.fcc.gov/edocs_public/attachmatch/FCC-97-157A1.pdf.

service mechanisms if we had interpreted universal service eligibility criteria so as to favor particular technologies.”⁶

The commitment to technological neutrality has provided important stability for the program as the Commission has repeatedly rebuffed efforts to compromise its commitment to neutrality. Sprint properly points out that over the last decade the Commission has affirmed the eligibility of both wireline and wireless telecommunications services,⁷ guided the National Broadband Plan to emphasize that eligibility criteria should be “company- and technology-agnostic,”⁸ and promoted technological neutrality in defining the services supported by USF.⁹

The Commission also responded to those who argue that neutrality does not serve the public interest in rural areas, explaining that “these commenters present a false choice between competition and universal service . . . competitive neutrality will promote emerging technologies . . . and may provide competitive alternatives in rural, insular and high cost areas.”¹⁰

Finally, and no less importantly, the Commission does not have to achieve its goal of widespread, affordable broadband access exclusively through the E-rate program. The universal service programs are designed to be complementary, so that the Commission’s efforts on one front support the other universal service initiatives. The Connect America Fund—which is specifically directed toward building out broadband access throughout rural America—will ameliorate many of the problems facing broadband adoption on rural schools and libraries. While E-rate will undoubtedly continue to play an important role in the adoption of broadband in rural areas, focusing the program on broadband adoption to the exclusion of other key telecommunications technologies such as voice service would be inappropriate.

⁶ *Id.*

⁷ See *Comments of Sprint Corporation In the Matter of Modernizing the E-rate Program For Schools and Libraries*, filed September 16, 2013 (“Sprint Comments”), at 2-3, available at <http://apps.fcc.gov/ecfs/document/view?id=7520943985>, citing *Schools and Libraries Universal Service Support Mechanism, Second Report and Order*, 18 FCC Rcd 9202, ¶ 26 (2003).

⁸ Sprint Comments at 3, citing *Connecting America: The National Broadband Plan*, at 145, released March 16, 2010.

⁹ *Id.*, citing *Connect America Fund, et al.*, 26 FCC Rcd 17665, ¶ 78 (2011).

¹⁰ 97 Order, ¶ 50.

II. The Commission should adopt per-student funding caps consistent with the Funds For Learning proposal.

The Commission asks in the NPRM whether it should revise the structure for distributing funds under E-rate by incorporating per-student or per-building cap on funding.¹¹ Although Jive does not support eliminating the Priority 1/Priority 2 distinction, Jive supports a per-student funding cap similar to the model proposed by Funds For Learning.¹²

The Commission has recognized that the current funding model is flawed. The Commission said in 2010 that “the current discount matrix and rules of priority have the effect of providing funding to a limited number of school districts that have the very highest percentage of students eligible for free or reduced price school lunch, while providing nothing to other districts that are significantly impoverished.”¹³ And over a decade ago, the Waste, Fraud, and Abuse Task Force recommended the Commission adopt a per-applicant funding ceiling, saying, “[a] ceiling would limit those applications that appear to be seeking disproportionately large funding requests. . . . [T]his . . . would help ensure that applicants are submitting the most cost-effective funding requests.”¹⁴

Funds For Learning has outlined a comprehensive plan for a per-student funding program that will ensure each school knows it will obtain at least some funding each year, and that will increase the average per-student funding available to 95% of schools without increasing the size of the E-rate fund.¹⁵ Importantly, the 95% of schools which will receive increased funding *includes* those rural schools where high-speed access is expensive or difficult to obtain.¹⁶ Even more importantly, Funds For Learning’s proposal does not rely on pie-in-the-sky economic projections or dubious assumptions. Rather, their proposal uses actual figures from FY 2013 to demonstrate how we can accomplish these changes in the context of today’s economic realities.

In July 2013, Commissioner Ajit Pai explained a similar vision for reforming E-rate. Central to his plan is the idea that E-rate should be funded on a per-student basis, with a

¹¹ NPRM, ¶ 116.

¹² *Comments of Funds For Learning, LLC*, WC Docket No. 13-184, filed September 16, 2013 (the “Funds For Learning Proposal”), available at <http://apps.fcc.gov/ecfs/document/view?id=7520944155>.

¹³ See *Notice of Proposed Rulemaking*, CC Docket 02-6, GN Docket 09-51, ¶¶ 69-70, adopted and released May 20, 2010, FCC 10-83, available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-10-83A1.pdf.

¹⁴ *Recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse*, September 22, 2003, at 5, available at <http://apps.fcc.gov/ecfs/document/view?id=6515291558>.

¹⁵ Funds For Learning Proposal, at 17, 20-26.

¹⁶ *Id.*, at 27-28.

multiplier to ensure that E-rate dollars flow to the rural and poorer areas where the money is needed most.¹⁷

The Commission should adopt the per-student funding reforms proposed by Commissioner Pai and Funds For Learning. These reforms will broaden the program's reach by ensuring an equitable, predictable distribution of public funds among the nation's schools and libraries. Ten years have passed since the Waste, Fraud and Abuse Task Force proposed similar reforms. It's time to implement them.

III. Before increasing the size of the E-rate fund, the Commission should carefully consider how it can minimize the increased burden on fund contributors.

Some commenters have suggested that the Commission delay expanding funding for the E-rate program until the effects of the high-cost reforms are better known and any changes within E-rate become effective.¹⁸

While Jive does not fully support these comments, the point is well-taken. Clearly, the E-rate fund needs to be expanded if it is to meet the current levels of demand. However, the effects of an increase on the USF contribution rate should not be ignored. Currently, the contribution rate is over 15%; doubling the size of the E-rate fund as some commenters advocate will undoubtedly push that rate higher. These higher rates will place an additional burden on an economy suffering the lingering effects of the recent recession.

To the extent the Commission can limit the burden placed on the American people, whether through measures aimed at improving cost-effectiveness or by changing the funding structure of the program as outlined above, it should do so before it takes action that will increase the contribution rate of the USF programs.

¹⁷ Remarks of Commissioner Ajit Pai, "Connecting the American Classroom: A Student-Centered E-rate Program," speech at the American Enterprise Institute, Washington, DC, July 16, 2013, at 6, available at <http://www.fcc.gov/document/commissioner-pai-speech-student-centered-e-rate-program>.

¹⁸ See, e.g., *Reply Comments of the Florida Public Service Commission*, WC Docket No. 13-184, filed October 21, 2013, available at <http://apps.fcc.gov/ecfs/document/view?id=7520948660>; and *Comments of the United States Telecom Association*, WC Docket No. 13-184, filed September 16, 2013 (the "USTelecom Comments"), available at <http://apps.fcc.gov/ecfs/document/view?id=7520943855>.

IV. The Commission should not divert critical program funds to support off-campus connectivity.

The Commission requests comment on whether it should permit schools and libraries to use E-rate funds to deploy community wireless hotspots and other off-campus access.¹⁹

The Commission should *not* divert already strained program funds to support off-campus community broadband access.

On this matter, Jive concurs with the United States Telecom Association:

By adopting such a rule, the Commission would effectively syphon off the already limited public funds dedicated to E-Rate Program services for non-E-Rate purposes. The deployment and maintenance of wireless hotspots for use by surrounding communities is an effort best suited for addressing through other Commission programs such as the Connect America Fund.²⁰

V. The Commission should streamline its application and fund disbursement processes.

Jive endorses the Commission's interest in streamlining the application process and reducing the administrative burden associated with application and program compliance. Where the Commission can take action to reduce the number of forms required and move the application process to automated, online portals it should do so.

The Commission should also adopt its proposal to allow E-rate applicants to receive BEAR disbursements directly from USAC rather than routing these payments through the service provider. Making this adjustment will simplify the reimbursement process for both the applicant and the service provider.

On the other hand, the Commission should not frustrate its efforts to streamline the administrative burden by requiring officer certifications for applications and requests for payment (i.e., Forms 472, 473, and 474).²¹ Where the officers act as E-rate decision makers within their organization, they are already obligated to make these certifications. But where the officers are not directly involved with E-rate, requiring them to certify only adds a burden without a benefit: the officers will rely on their employees to obtain the necessary information but will ultimately be no more knowledgeable about the compliance within their organization than before. Because the number of documents requiring certification can run into the hundreds or thousands, obtaining the information necessary

¹⁹ NPRM, ¶ 319.

²⁰ USTelecom Comments, at 10.

²¹ NPRM, ¶ 300.

to be able to make the certification shifts a significant burden from the employees responsible for the E-rate program to the officers.

VI. Jive reiterates its support for reforms to the multi-year funding procedures.

As Jive stated in its original comments, the Commission's rules prohibiting USAC from issuing multi-year funding commitments, or requiring applicants to file new copies of their Form 471 in the subsequent years of a multi-year contract, waste time. The Commission should establish a policy that permits USAC to issue multi-year funding commitments when a multi-year contract has been approved under E-rate program rules.

Many commenters have provided insightful comments regarding this issue. Jive endorses the position taken by Funds For Learning. A multiyear FRN will:

- (1) Help to improve applicant budgeting and technology planning.
- (2) Increase the predictability of funding. Being able to count on a funding commitment beyond the first year of a project will enable applicants to plan the use of their E-rate supported goods and services much more effectively.
- (3) Increase funding utilization, because the longer it takes to receive a funding commitment, the less likely an applicant is to use all or part of its funding. A multiyear funding commitment will effectively reduce the waiting time for an FCDL to zero days in the outer year(s) of a multiyear commitment. Higher funding utilization rates obviously reduce the amount of funds that will be available for rollover. Thus multiyear funding commitment address concerns that Commissioner Pai has raised about large amounts of funding currently not being put to use.
- (4) Empower applicants to take on more capital-intensive projects to increase broadband capacity by guaranteeing multiple years of funding for large P1 projects, which the rules require be amortized over a period of at least three years.
- (5) Incent more vendors to participate in the E-rate program and to offer more cost effective solutions because they can count on their customers receiving more than one year of funding at a time.
- (6) Reduce the administrative costs associated with preparing and reviewing requests for E-rate funding.²²

²² Funds For Learning Proposal, at 42-43.

Conclusion

Once again, Jive submits that any proposal to alter the E-rate program should expand the freedom of local decision makers to meet local needs with appropriate local solutions, rather than having choices dictated by E-rate policies. The Commission should (1) reaffirm its commitment to technological and competitive neutrality in its funding criteria; (2) expand the reach of E-rate by adopting a per-student funding cap; (3) limit its expenditures to services that support access at libraries and schools, not in the wider community; (4) limit the burden on applicants and service providers by shifting to an online, automated application portal, allowing disbursements directly to applicants, and refusing to impose additional certification requirements on officers; and (5) allow USAC to issue multi-year funding commitments.

Jive appreciates the opportunity to participate in the continued development of the E-rate program and will, as always, make appropriate employees available to the Commission for further discussion of any of its points if necessary.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Michael Sharp', with a long, sweeping horizontal line extending to the right.

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